

CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

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AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 474(r)(29)(B), (C), July 18, 1984, 98 Stat. 844, struck out “AND TAX-FREE COVENANT BONDS” after “FOREIGN CORPORATIONS” in heading of chapter 3, and struck out item for subchapter B “Tax-free covenant bonds” and redesignated the item for subchapter C as B.

Subchapter A—Nonresident Aliens and Foreign Corporations

Sec.	
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AMENDMENTS

1988—Pub. L. 100-647, title I, § 1012(s)(1)(C), Nov. 10, 1988, 102 Stat. 3527, substituted “Withholding of tax on foreign partners' share of effectively connected income” for “Withholding tax on amounts paid by partnerships to foreign partners” in item 1446.

1986—Pub. L. 99-514, title XII, § 1246(c), Oct. 22, 1986, 100 Stat. 2582, added item 1446.

1984—Pub. L. 98-369, div. A, title I, § 129(a)(2), July 18, 1984, 98 Stat. 659, added item 1445.

1983—Pub. L. 97-455, § 1(d)(2), Jan. 12, 1983, 96 Stat. 2498, added item 1444.

§ 1441. Withholding of tax on nonresident aliens

(a) General rule

Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except as otherwise provided in regulations prescribed by the Secretary under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

(b) Income items

The items of income referred to in subsection (a) are interest (other than original issue discount as defined in section 1273), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 631(b) or (c), amounts subject to tax under sec-

tion 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966. The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act and which are—

(1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or

(2) in the case of an individual who is not a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii), granted by—

(A) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

(B) a foreign government,

(C) an international organization, or a bi-national or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or

(D) the United States, or an instrumentality or agency thereof, or a State, or a possession of the United States, or any political subdivision thereof, or the District of Columbia,

as a scholarship or fellowship for study, training, or research in the United States. In the case of a nonresident alien individual who is a member of a domestic partnership, the items of income referred to in subsection (a) shall be treated as referring to items specified in this subsection included in his distributive share of the income of such partnership.

(c) Exceptions

(1) Income connected with United States business

No deduction or withholding under subsection (a) shall be required in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year.

(2) Owner unknown

The Secretary may authorize the tax under subsection (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(3) Bonds with extended maturity dates

The deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within subsections (a), (b), and (c) of section 1451 (as in effect before its repeal by the Tax Reform Act of 1984) were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and

¹ Section numbers editorially supplied.

the liability assumed by the debtor exceeds 27½ percent of the interest, shall not exceed the rate of 27½ percent per annum.

(4) Compensation of certain aliens

Under regulations prescribed by the Secretary, compensation for personal services may be exempted from deduction and withholding under subsection (a).

(5) Special items

In the case of gains described in section 631(b) or (c), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966, the amount required to be deducted and withheld shall, if the amount of such gain is not known to the withholding agent, be such amount, not exceeding 30 percent of the amount payable, as may be necessary to assure that the tax deducted and withheld shall not be less than 30 percent of such gain.

(6) Per diem of certain aliens

No deduction or withholding under subsection (a) shall be required in the case of amounts of per diem for subsistence paid by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended.

(7) Certain annuities received under qualified plans

No deduction or withholding under subsection (a) shall be required in the case of any amount received as an annuity if such amount is, under section 871(f), exempt from the tax imposed by section 871(a).

(8) Original issue discount

The Secretary may prescribe such regulations as may be necessary for the deduction and withholding of the tax on original issue discount subject to tax under section 871(a)(1)(C) including rules for the deduction and withholding of the tax on original issue discount from payments of interest.

(9) Interest income from certain portfolio debt investments

In the case of portfolio interest (within the meaning of section 871(h)), no tax shall be required to be deducted and withheld from such interest unless the person required to deduct and withhold tax from such interest knows, or has reason to know, that such interest is not portfolio interest by reason of section 871(h)(3) or (4).

(10) Exception for certain interest and dividends

No tax shall be required to be deducted and withheld under subsection (a) from any amount described in section 871(i)(2).

(11) Certain gambling winnings

No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(j).

(12) Certain dividends received from regulated investment companies

(A) In general

No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(k).

(B) Special rule

For purposes of subparagraph (A), clause (i) of section 871(k)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause. A similar rule shall apply with respect to the exception contained in section 871(k)(2)(B).

(d) Exemption of certain foreign partnerships

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign partnership engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 871(a) on the members of such partnership who are nonresident alien individuals will not be jeopardized by the exemption.

(e) Alien resident of Puerto Rico

For purposes of this section, the term “nonresident alien individual” includes an alien resident of Puerto Rico.

(f) Continental shelf areas

For sources of income derived from, or for services performed with respect to, the exploration or exploitation of natural resources on submarine areas adjacent to the territorial waters of the United States, see section 638.

(g) Cross reference

For provision treating 85 percent of social security benefits as subject to withholding under this section, see section 871(a)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 357; Aug. 26, 1954, ch. 937, title V, § 544(f), as added July 18, 1956, ch. 627, § 11(a), 70 Stat. 563; amended Pub. L. 85-141, § 11(b)(1), Aug. 14, 1957, 71 Stat. 365; Pub. L. 85-866, title I, § 40(b), Sept. 2, 1958, 72 Stat. 1638; Pub. L. 87-256, § 110(d), Sept. 21, 1961, 75 Stat. 536; Pub. L. 88-272, title III, § 302(c), Feb. 26, 1964, 78 Stat. 146; Pub. L. 89-809, title I, § 103(h), Nov. 13, 1966, 80 Stat. 1553; Pub. L. 91-172, title V, § 505(b), Dec. 30, 1969, 83 Stat. 634; Pub. L. 92-178, title III, § 313(a), (d), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-21, title I, § 121(c)(2), Apr. 20, 1983, 97 Stat. 82; Pub. L. 98-369, div. A, title I, §§ 42(a)(13), 127(e)(1), title IV, § 474(r)(29)(G), (H), July 18, 1984, 98 Stat. 557, 652, 845; Pub. L. 99-514, title I, § 123(b)(2), title XII, § 1214(c)(3), title XVIII, § 1810(d)(3)(D), Oct. 22, 1986, 100 Stat. 2113, 2542, 2825; Pub. L. 100-647, title I, § 1001(d)(2)(A), title VI, § 6134(a)(2), Nov. 10, 1988, 102 Stat. 3350, 3721; Pub. L. 101-508, title XI, § 11704(a)(14), Nov. 5, 1990, 104 Stat. 1388-518; Pub. L. 102-318, title V, § 521(b)(32), (33), July 3, 1992, 106 Stat. 312; Pub. L. 103-66, title XIII, § 13237(c)(4), Aug. 10, 1993, 107 Stat. 508; Pub. L. 103-296, title III, § 320(a)(1)(B), Aug. 15, 1994, 108

Stat. 1535; Pub. L. 105-34, title XVI, §1604(g)(3), Aug. 5, 1997, 111 Stat. 1099; Pub. L. 108-357, title IV, §411(a)(3)(A), Oct. 22, 2004, 118 Stat. 1503.)

REFERENCES IN TEXT

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsec. (b), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

The Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (b)(2)(C), is Pub. L. 87-256, Sept. 21, 1961, 75 Stat. 527, as amended, which is classified principally to chapter 33 (§2451 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of Title 22 and Tables.

The Tax Reform Act of 1984, referred to in subsec. (c)(3), is division A [§§5 to 1082] of Pub. L. 98-369, July 18, 1984, 98 Stat. 494, which was approved July 18, 1984. For complete classification of this Act to the Code, see Short Title of 1984 Amendments note set out under section 1 of this title and Tables.

The Mutual Security Act of 1954, referred to in subsec. (c)(6), is act Aug. 26, 1954, ch. 937, 68 Stat. 832, as amended by acts July 8, 1955, ch. 301, 69 Stat. 283; July 18, 1956, ch. 627, §§2 to 11, 70 Stat. 555; Aug. 14, 1957, Pub. L. 85-141, 71 Stat. 355; June 30, 1958, Pub. L. 85-477, ch. 1, §§101 to 103, ch. II, §§201 to 205, ch. III, §301, ch. IV, §401, ch. V, §501, 72 Stat. 261; July 24, 1959, Pub. L. 86-108, §2, ch. 1, §101, ch. II, §§201 to 205(a) to (i), (k) to (n), ch. III, §301, ch. IV, §401(a) to (k), (m), 73 Stat. 246; May 14, 1960, Pub. L. 86-472, ch. I to V, 74 Stat. 134, which was principally classified to chapter 24 (§1750 et seq.) of Title 22, Foreign Relations and Intercourse, and which was repealed by act July 18, 1956, ch. 627, §8(m), 70 Stat. 559, Pub. L. 85-141, §§2(e), 3, 4(b), 11(d), Aug. 14, 1957, 71 Stat. 356, Pub. L. 86-108, ch. II, §§205(j), ch. IV, 401(l), July 24, 1959, 73 Stat. 250, Pub. L. 86-472, ch. II, §§203(d), 204(k), May 14, 1960, 74 Stat. 138, Pub. L. 87-195, pt. III, §642(a)(2), Sept. 4, 1961, 75 Stat. 460, Pub. L. 94-329, title II, §212(b)(1), June 30, 1976, 90 Stat. 745, except for sections 1754, 1783, 1796, 1853, 1922, 1928, and 1937 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 1754 of Title 22 and Tables.

AMENDMENTS

2004—Subsec. (c)(12). Pub. L. 108-357 added par. (12).

1997—Subsec. (g). Pub. L. 105-34 substituted “85 percent” for “one-half”.

1994—Subsec. (b). Pub. L. 103-296 substituted “(J), (M), or (Q)” for “(J), or (M)”.

1993—Subsec. (c)(9). Pub. L. 103-66 substituted “section 871(h)(3) or (4)” for “section 871(h)(3)”.

1992—Subsecs. (b), (c)(5). Pub. L. 102-318 struck out “402(a)(2), 403(a)(2), or” before “631(b)”.

1990—Subsec. (b)(2). Pub. L. 101-508 inserted “section” before “170(b)(1)(A)(ii)”.

1988—Subsec. (b). Pub. L. 100-647, §1001(d)(2)(A), amended second sentence generally. Prior to amendment, second sentence read as follows: “The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act and which are incident to a qualified scholarship to which section 117(a) applies, but only to the extent such amounts are includable in gross income.”

Subsec. (c)(11). Pub. L. 100-647, §6134(a)(2), added par. (11).

1986—Subsec. (b). Pub. L. 99-514, §123(b)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: “The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are—

“(1) that portion of any scholarship or fellowship grant which is received by a nonresident alien individual who is temporarily present in the United

States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is not excluded from gross income under section 117(a)(1) solely by reason of section 117(b)(2)(B); and

“(2) amounts described in subparagraphs (A), (B), (C), and (D) of section 117(a)(2) which are received by any such nonresident alien individual and which are incident to a scholarship or fellowship grant to which section 117(a)(1) applies, but only to the extent such amounts are includable in gross income.”

Subsec. (c)(9). Pub. L. 99-514, §1810(d)(3)(D), substituted “section 871(h)” for “871(h)(2)”.

Subsec. (c)(10). Pub. L. 99-514, §1214(c)(3), added par. (10).

1984—Subsec. (a). Pub. L. 98-369, §474(r)(29)(G), struck out “except in the cases provided for in section 1451 and” before “except as otherwise provided in regulations”.

Subsec. (b). Pub. L. 98-369, §42(a)(13), substituted “section 1273” for “section 1232(b)”.

Subsec. (c)(3). Pub. L. 98-369, §474(r)(29)(H), inserted “(as in effect before its repeal by the Tax Reform Act of 1984)”.

Subsec. (c)(9). Pub. L. 98-369, §127(e)(1), added par. (9).

1983—Subsec. (g). Pub. L. 98-21 added subsec. (g).

1976—Pub. L. 94-455 struck out in subsecs. (a), (c)(2), (4), (8), (d), “or his delegate” after “Secretary”.

1971—Subsec. (b). Pub. L. 92-178, §313(a), inserted “(other than original issue discount as defined in section 1232(b))” after “interest”.

Subsec. (c)(8). Pub. L. 92-178, §313(d), added par. (8).

1969—Subsec. (f). Pub. L. 91-172 added subsec. (f).

1966—Subsec. (a). Pub. L. 89-809, §103(h)(1), substituted “or of any foreign partnership” for “, or of any partnership not engaged in trade or business within the United States and composed in whole or in part of non-resident aliens.”.

Subsec. (b). Pub. L. 89-809, §103(h)(2)-(4), struck out “(except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States)” after “The items of income referred to in subsection (a) are interest” and substituted “gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966” for “and amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets” in text preceding par. (1), and inserted provision for treatment of items of income referred to in subsec. (a) in the case of nonresident alien individuals who are members of domestic partnerships.

Subsec. (c)(1). Pub. L. 89-809, §103(h)(5), substituted “in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year” for “in the case of dividends paid by a foreign corporation unless (A) such corporation is engaged in trade or business within the United States, and (B) more than 85 percent of the gross income of such corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under part I of subchapter N of chapter 1” after “shall be required”.

Subsec. (c)(4). Pub. L. 89-809, §103(h)(6), struck out provisions which had served to limit to compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals and of nonresident alien individuals for the period they are temporarily present in the United States as a nonimmigrant under subparagraph (F) and (J) of section 101(a)(15) of the Immigration and Nationality

Act, as amended, the application of the exemption from deduction and withholding under subsec. (a), leaving the exemption under subsec. (a) applicable to compensation for personal services without further limitation.

Subsec. (c)(5). Pub. L. 89-809, §103(h)(7), substituted “gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), gains subject to tax under section 871 (a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966,” for “amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets,” and “amounts payable,” for “proceeds from such sale or exchange.”

Subsec. (c)(7). Pub. L. 89-809, §103(h)(8), added par. (7).
Subsecs. (d), (e). Pub. L. 89-809, §103(h)(9), added subsec. (d) and redesignated former subsec. (d) as (e).

1964—Subsecs. (a), (b). Pub. L. 88-272 reduced the withholding rate from 18% to 14%.

1961—Subsec. (a). Pub. L. 87-256, §110(d)(1), required a tax equal to 18 percent of the item in the case of any item of income specified in second sentence of subsection (b).

Subsec. (b). Pub. L. 87-256, §110(d)(2), inserted provisions listing items of income from which tax shall be deducted and withheld at the rate of 18 percent.

Subsec. (c)(4). Pub. L. 87-256, §110(d)(3), authorized the exemption from deduction and withholding of the compensation for personal services of a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subpar. (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended.

1958—Subsecs. (b), (c)(5). Pub. L. 85-866 inserted “section 403(a)(2),” after “section 402(a)(2).”

1956—Subsec. (c)(6). Act July 18, 1956, added section 544(f) to act Aug. 26, 1954, which section amended this subsection by adding par. (6).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, see section 411(d)(1) of Pub. L. 108-357, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103-296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103-66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(A) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 123(b)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1214(c)(3) of Pub. L. 99-514 applicable to payments made in a taxable year of the

payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99-514, as amended, set out as a note under section 861 of this title.

Amendment by section 1810(d)(3)(D) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(13) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 127(e)(1) of Pub. L. 98-369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98-369, set out as a note under section 871 of this title.

Amendment by section 474(r)(29)(G), (H) of Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98-21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to payments occurring on or after Apr. 1, 1972, see section 313(f) of Pub. L. 92-178, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to payments made in taxable years of recipients beginning after Dec. 31, 1966, see section 103(n)(2) of Pub. L. 89-809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to payments made after seventh day following Feb. 24, 1964, see section 302(d) of Pub. L. 88-272, set out as a note under section 3402 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 110(h)(2) of Pub. L. 87-256 provided that: “The amendments made by subsection (d) of this section [amending this section] shall apply with respect to payments made after December 31, 1961.”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 effective Sept. 3, 1958, see section 40(c) of Pub. L. 85-866, set out as a note under section 871 of this title.

REPEALS

Section 544(f) of act Aug. 26, 1954, cited as a credit to this section, was repealed by Pub. L. 85-141, except insofar as such section 544(f) affected this section.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 123(b)(2) and 1214(c)(3) of Pub. L. 99-514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any

amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND
FOREIGN CORPORATIONS

Pub. L. 97-248, title III, § 342, Sept. 3, 1982, 96 Stat. 635, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Not later than 2 years after the date of the enactment of this Act [Sept. 3, 1982], the Secretary of the Treasury or his delegate shall prescribe regulations establishing certification procedures, refund procedures, or other procedures which ensure that any benefit of any treaty relating to withholding of tax under sections 1441 and 1442 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is available only to persons entitled to such benefit."

§ 1442. Withholding of tax on foreign corporations

(a) General rule

In the case of foreign corporations subject to taxation under this subtitle, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in section 1441 a tax equal to 30 percent thereof. For purposes of the preceding sentence, the references in section 1441(b) to sections 871(a)(1)(C) and (D) shall be treated as referring to sections 881(a)(3) and (4), the reference in section 1441(c)(1) to section 871(b)(2) shall be treated as referring to section 842 or section 882(a)(2), as the case may be, the reference in section 1441(c)(5) to section 871(a)(1)(D) shall be treated as referring to section 881(a)(4), the reference in section 1441(c)(8) to section 871(a)(1)(C) shall be treated as referring to section 881(a)(3), the references in section 1441(c)(9) to sections 871(h) and 871(h)(3) or (4) shall be treated as referring to sections 881(c) and 881(c)(3) or (4), the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d), and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause).

(b) Exemption

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign corporation engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 881 on such corporation will not be jeopardized by the exemption.

(c) Exception for certain possessions corporations

(1) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands

For purposes of this section, the term "foreign corporation" does not include a corporation created or organized in Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands or under the law of any such possession if the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met with respect to such corporation.

(2) Commonwealth of Puerto Rico

(A) In general

If dividends are received during a taxable year by a corporation—

(i) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

(ii) with respect to which the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting "10 percent" for "30 percent".

(B) Applicability

If, on or after the date of the enactment of this paragraph, an increase in the rate of the Commonwealth of Puerto Rico's withholding tax which is generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent takes effect, this paragraph shall not apply to dividends received on or after the effective date of the increase.

(Aug. 16, 1954, ch. 736, 68A Stat. 358; Pub. L. 89-809, title I, § 104(c), Nov. 13, 1966, 80 Stat. 1557; Pub. L. 92-178, title III, § 313(e), Dec. 10, 1971, 85 Stat. 528; Pub. L. 92-606, § 1(e)(2), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, §§ 127(e)(2), 130(b), title IV, § 474(r)(29)(I), July 18, 1984, 98 Stat. 652, 661, 845; Pub. L. 99-514, title XII, § 1273(b)(2)(B), title XVIII, § 1810(d)(3)(E), Oct. 22, 1986, 100 Stat. 2596, 2825; Pub. L. 100-647, title I, § 1012(g)(7), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 103-66, title XIII, § 13237(c)(5), Aug. 10, 1993, 107 Stat. 508; Pub. L. 108-357, title IV, §§ 411(a)(3)(B), 420(b), Oct. 22, 2004, 118 Stat. 1504, 1513.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (c)(2)(B), is the date of enactment of Pub. L. 108-357, which was approved Oct. 22, 2004.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-357, §411(a)(3)(B), substituted “the reference in section 1441(c)(10)” for “and the reference in section 1441(c)(10)” and inserted before period at end “, and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause)”.

Subsec. (c). Pub. L. 108-357, §420(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

1993—Subsec. (a). Pub. L. 103-66 substituted “871(h)(3) or (4)” for “871(h)(3)” and “881(c)(3) or (4)” for “881(c)(3)”.

1988—Subsec. (a). Pub. L. 100-647 struck out “and” after “to section 881(a)(3),” and inserted before period at end “, and the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d)”.

1986—Subsec. (a). Pub. L. 99-514, §1810(d)(3)(E), substituted “871(h)” for “871(h)(2)”, “881(c)” for “881(c)(2)”, and “1441(c)(9)” for “1449(c)(9)”.

Subsec. (c). Pub. L. 99-514, §1273(b)(2)(B), amended subsec. (c) generally, substituting reference to “certain possessions corporations” for reference to “certain Guam and Virgin Islands corporations” in heading, and in text extending “foreign corporation” exception so as to not include corporation created or organized in Guam, American Samoa, Northern Mariana Islands, or the Virgin Islands, and striking out par. (2) which declared that par. (1) not apply to tax imposed in Guam, and par. (3) which referred to sections 934 and 943a for tax imposed in Virgin Islands.

1984—Subsec. (a). Pub. L. 98-369, §474(r)(29)(I), struck out “or section 1451” after “provided in section 1441” and struck out “; except that, in the case of interest described in section 1451 (relating to tax-free covenant bonds), the deduction and withholding shall be at the rate specified therein” after “a tax equal to 30 percent thereof”.

Pub. L. 98-369, §127(e)(2), struck out “and” after “section 881(a)(4),” and inserted “, and the references in section 1449(c)(9) to sections 871(h)(2) and 871(h)(3) shall be treated as referring to sections 881(c)(2) and 881(c)(3)”.

Subsec. (c). Pub. L. 98-369, §130(b), substituted provision relating to exception for certain Guam and Virgin Islands corporations for provision relating to exception for Guam corporations.

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary” in two places.

1972—Subsec. (c). Pub. L. 92-606 added subsec. (c).

1971—Subsec. (a). Pub. L. 92-178 provided that reference in section 1441(c)(8) to section 871(a)(1)(C) shall be treated as referring to section 881(a)(3).

1966—Pub. L. 89-809 limited the withholding of tax at the 30 percent rate to items of fixed or determinable United States source income not effectively connected with the conduct of a trade or business in the United States and authorized the granting of an exemption from the withholding requirement in the case of a foreign corporation engaged in trade or business within the United States if the Secretary or his delegate determines that the withholding imposes an undue administrative burden and that the collection of the tax will not be jeopardized by the exemption.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(a)(3)(B) of Pub. L. 108-357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, see section 411(d)(1) of Pub. L. 108-357, set out as a note under section 871 of this title.

Amendment by section 420(b) of Pub. L. 108-357 applicable to dividends paid after Oct. 22, 2004, see section

420(d) of Pub. L. 108-357, set out as a note under section 881 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103-66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1273(b)(2)(B) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

Amendment by section 1810(d)(3)(E) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 127(e)(2) of Pub. L. 98-369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years after such date, see section 127(g)(1) of Pub. L. 98-369, set out as a note under section 871 of this title.

Amendment by section 130(b) of Pub. L. 98-369 applicable to payments made after Mar. 1, 1984, in taxable years ending after such date, see section 130(d) of Pub. L. 98-369, set out as a note under section 881 of this title.

Amendment by section 474(r)(29)(I) of Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 2 of Pub. L. 92-606 provided in part that: “The amendment made by section 1(e)(2) [amending this section] shall take effect on the day after the date of enactment of this Act [Oct. 31, 1972].”

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to payments occurring on or after Apr. 1, 1972, see section 313(f) of Pub. L. 92-178, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND
FOREIGN CORPORATIONS

For provisions relating to withholding of tax on nonresident aliens and foreign corporations, see Pub. L.

97-248, title III, §342, Sept. 3, 1982, 96 Stat. 635, set out as a note under section 1441 of this title.

§ 1443. Foreign tax-exempt organizations

(a) Income subject to section 511

In the case of income of a foreign organization subject to the tax imposed by section 511, this chapter shall apply to income includible under section 512 in computing its unrelated business taxable income, but only to the extent and subject to such conditions as may be provided under regulations prescribed by the Secretary.

(b) Income subject to section 4948

In the case of income of a foreign organization subject to the tax imposed by section 4948(a), this chapter shall apply, except that the deduction and withholding shall be at the rate of 4 percent and shall be subject to such conditions as may be provided under regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 358; Pub. L. 91-172, title I, §§101(j)(22), 121(d)(2)(C), Dec. 30, 1969, 83 Stat. 528, 547; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” in two places.

1969—Pub. L. 91-172, §101(j)(22), designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a). Pub. L. 91-172, §121(d)(2)(C), substituted “income” for “rents” after “this chapter shall apply to”.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(22) of Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(d)(2)(C) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

§ 1444. Withholding on Virgin Islands source income

For purposes of determining the withholding tax liability incurred in the Virgin Islands pursuant to this title (as made applicable to the Virgin Islands) with respect to amounts received from sources within the Virgin Islands by citizens and resident alien individuals of the United States, and corporations organized in the United States, the rate of withholding tax under sections 1441 and 1442 on income subject to tax under section 871(a)(1) or 881 shall not exceed the rate of tax on such income under section 871(a)(1) or 881, as the case may be.

(Added Pub. L. 97-455, §1(b), Jan. 12, 1983, 96 Stat. 2497; amended Pub. L. 100-647, title I, §1012(x), Nov. 10, 1988, 102 Stat. 3530.)

AMENDMENTS

1988—Pub. L. 100-647 struck out “(as modified by section 934A)” before “shall not exceed”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to payments made after Jan. 12, 1983, see section 1(e)(2) of Pub. L. 97-455, set out as a note under section 934 of this title.

§ 1445. Withholding of tax on dispositions of United States real property interests

(a) General rule

Except as otherwise provided in this section, in the case of any disposition of a United States real property interest (as defined in section 897(c)) by a foreign person, the transferee shall be required to deduct and withhold a tax equal to 10 percent of the amount realized on the disposition.

(b) Exemptions

(1) In general

No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition if paragraph (2), (3), (4), (5), or (6) applies to the transaction.

(2) Transferor furnishes nonforeign affidavit

Except as provided in paragraph (7), this paragraph applies to the disposition if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person.

(3) Nonpublicly traded domestic corporation furnishes affidavit that interests in corporation not United States real property interests

Except as provided in paragraph (7), this paragraph applies in the case of a disposition of any interest in any domestic corporation if the domestic corporation furnishes to the transferee an affidavit by the domestic corporation stating, under penalty of perjury, that—

(A) the domestic corporation is not and has not been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii), or

(B) as of the date of the disposition, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B).

(4) Transferee receives qualifying statement

(A) In general

This paragraph applies to the disposition if the transferee receives a qualifying statement at such time, in such manner, and subject to such terms and conditions as the Secretary may by regulations prescribe.

(B) Qualifying statement

For purposes of subparagraph (A), the term “qualifying statement” means a statement by the Secretary that—

(i) the transferor either—

(I) has reached agreement with the Secretary (or such agreement has been reached by the transferee) for the payment of any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recog-

nized by the transferor on the disposition of the United States real property interest, or

(II) is exempt from any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, and

(ii) the transferor or transferee has satisfied any transferor's unsatisfied withholding liability or has provided adequate security to cover such liability.

(5) Residence where amount realized does not exceed \$300,000

This paragraph applies to the disposition if—

(A) the property is acquired by the transferee for use by him as a residence, and

(B) the amount realized for the property does not exceed \$300,000.

(6) Stock regularly traded on established securities market

This paragraph applies if the disposition is of a share of a class of stock that is regularly traded on an established securities market.

(7) Special rules for paragraphs (2) and (3)

Paragraph (2) or (3) (as the case may be) shall not apply to any disposition—

(A) if—

(i) the transferee has actual knowledge that the affidavit referred to in such paragraph is false, or

(ii) the transferee receives a notice (as described in subsection (d)) from a transferor's agent or a transferee's agent that such affidavit is false, or

(B) if the Secretary by regulations requires the transferee to furnish a copy of such affidavit to the Secretary and the transferee fails to furnish a copy of such affidavit to the Secretary at such time and in such manner as required by such regulations.

(c) Limitations on amount required to be withheld

(1) Cannot exceed transferor's maximum tax liability

(A) In general

The amount required to be withheld under this section with respect to any disposition shall not exceed the amount (if any) determined under subparagraph (B) as the transferor's maximum tax liability.

(B) Request

At the request of the transferor or transferee, the Secretary shall determine, with respect to any disposition, the transferor's maximum tax liability.

(C) Refund of excess amounts withheld

Subject to such terms and conditions as the Secretary may by regulations prescribe, a transferor may seek and obtain a refund of any amounts withheld under this section in excess of the transferor's maximum tax liability.

(2) Authority of Secretary to prescribe reduced amount

At the request of the transferor or transferee, the Secretary may prescribe a reduced

amount to be withheld under this section if the Secretary determines that to substitute such reduced amount will not jeopardize the collection of the tax imposed by section 871(b)(1) or 882(a)(1).

(3) Procedural rules

(A) Regulations

Requests for—

(i) qualifying statements under subsection (b)(4),

(ii) determinations of transferor's maximum tax liability under paragraph (1), and

(iii) reductions under paragraph (2) in the amount required to be withheld,

shall be made at the time and manner, and shall include such information, as the Secretary shall prescribe by regulations.

(B) Requests to be handled within 90 days

The Secretary shall take action with respect to any request described in subparagraph (A) within 90 days after the Secretary receives the request.

(d) Liability of transferor's agents or transferee's agents

(1) Notice of false affidavit; foreign corporations

If—

(A) the transferor furnishes the transferee an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

(B) in the case of—

(i) any transferor's agent—

(I) such agent has actual knowledge that such affidavit is false, or

(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

(ii) any transferee's agent, such agent has actual knowledge that such affidavit is false,

such agent shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.

(2) Failure to furnish notice

(A) In general

If any transferor's agent or transferee's agent is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent shall have the same duty to deduct and withhold that the transferee would have had if such agent had complied with paragraph (1).

(B) Liability limited to amount of compensation

An agent's liability under subparagraph (A) shall be limited to the amount of compensation the agent derives from the transaction.

(3) Transferor's agent

For purposes of this subsection, the term "transferor's agent" means any person who represents the transferor—

(A) in any negotiation with the transferee or any transferee's agent related to the transaction, or

(B) in settling the transaction.

(4) Transferee's agent

For purposes of this subsection, the term "transferee's agent" means any person who represents the transferee—

(A) in any negotiation with the transferor or any transferor's agent related to the transaction, or

(B) in settling the transaction.

(5) Settlement officer not treated as transferor's agent

For purposes of this subsection, a person shall not be treated as a transferor's agent or transferee's agent with respect to any transaction merely because such person performs 1 or more of the following acts:

(A) The receipt and the disbursement of any portion of the consideration for the transaction.

(B) The recording of any document in connection with the transaction.

(e) Special rules relating to distributions, etc., by corporations, partnerships, trusts, or estates

(1) Certain domestic partnerships, trusts, and estates

In the case of any disposition of a United States real property interest as defined in section 897(c) (other than a disposition described in paragraph (4) or (5)) by a domestic partnership, domestic trust, or domestic estate, such partnership, the trustee of such trust, or the executor of such estate (as the case may be) shall be required to deduct and withhold under subsection (a) a tax equal to 35 percent (or, to the extent provided in regulations, 15 percent) of the gain realized to the extent such gain—

(A) is allocable to a foreign person who is a partner or beneficiary of such partnership, trust, or estate, or

(B) is allocable to a portion of the trust treated as owned by a foreign person under subpart E of part I of subchapter J.

(2) Certain distributions by foreign corporations

In the case of any distribution by a foreign corporation on which gain is recognized under subsection (d) or (e) of section 897, the foreign corporation shall deduct and withhold under subsection (a) a tax equal to 35 percent of the amount of gain recognized on such distribution under such subsection.

(3) Distributions by certain domestic corporations to foreign shareholders

If a domestic corporation which is or has been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii) distributes property to a foreign person in a transaction to which section 302 or part II of subchapter C applies, such corporation shall deduct and withhold under subsection (a) a tax equal to 10 percent of the amount realized by the foreign shareholder. The preceding sentence shall not apply if, as of

the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B). Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation.

(4) Taxable distributions by domestic or foreign partnerships, trusts, or estates

A domestic or foreign partnership, the trustee of a domestic or foreign trust, or the executor of a domestic or foreign estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of the fair market value (as of the time of the taxable distribution) of any United States real property interest distributed to a partner of the partnership or a beneficiary of the trust or estate, as the case may be, who is a foreign person in a transaction which would constitute a taxable distribution under the regulations promulgated by the Secretary pursuant to section 897.

(5) Rules relating to dispositions of interest in partnerships, trusts, or estates

To the extent provided in regulations, the transferee of a partnership interest or of a beneficial interest in a trust or estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of the amount realized on the disposition.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for exceptions from provisions of this subsection and regulations for the application of this subsection in the case of payments through 1 or more entities.

(f) Definitions

For purposes of this section—

(1) Transferor

The term "transferor" means the person disposing of the United States real property interest.

(2) Transferee

The term "transferee" means the person acquiring the United States real property interest.

(3) Foreign person

The term "foreign person" means any person other than a United States person.

(4) Transferor's maximum tax liability

The term "transferor's maximum tax liability" means, with respect to the disposition of any interest, the sum of—

(A) the maximum amount which the Secretary determines could be imposed as tax under section 871(b)(1) or 882(a)(1) by reason of the disposition, plus

(B) the amount the Secretary determines to be the transferor's unsatisfied withholding liability with respect to such interest.

(5) Transferor's unsatisfied withholding liability

The term “transferor's unsatisfied withholding liability” means the withholding obligation imposed by this section on the transferor's acquisition of the United States real property interest or on the acquisition of a predecessor interest, to the extent such obligation has not been satisfied.

(Added Pub. L. 98-369, div. A, title I, §129(a)(1), July 18, 1984, 98 Stat. 655; amended Pub. L. 99-514, title III, §311(b)(4), title XVIII, §1810(f)(2)–(4)(A), (5), (6), (8), Oct. 22, 1986, 100 Stat. 2219, 2827, 2828; Pub. L. 100-647, title I, §1003(b)(3), Nov. 10, 1988, 102 Stat. 3384; Pub. L. 103-66, title XIII, §13221(c)(3), Aug. 10, 1993, 107 Stat. 477; Pub. L. 104-188, title I, §1704(c)(1), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 105-34, title III, §311(c)(1), Aug. 5, 1997, 111 Stat. 835; Pub. L. 108-27, title III, §301(a)(2)(C), May 28, 2003, 117 Stat. 758.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108-27, see Effective and Termination Dates of 2003 Amendment note below.

AMENDMENTS

2003—Subsec. (e)(1). Pub. L. 108-27, §§301(a)(2)(C), 303, temporarily substituted “15 percent” for “20 percent”. See Effective and Termination Dates of 2003 Amendment note below.

1997—Subsec. (e)(1). Pub. L. 105-34 substituted “20 percent” for “28 percent” in introductory provisions.

1996—Subsec. (e)(3). Pub. L. 104-188 inserted at end “Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation.”

1993—Subsec. (e)(1), (2). Pub. L. 103-66 substituted “35 percent” for “34 percent”.

1988—Subsec. (e)(1). Pub. L. 100-647 inserted “(or, to the extent provided in regulations, 28 percent)” after “to 34 percent”.

1986—Subsec. (b)(3). Pub. L. 99-514, §1810(f)(2), amended par. (3) generally, substituting “interests in corporation not United States real property interests” for “it is not a United States real property holding corporation” in heading, striking out the comma before “if the domestic corporation” in introductory provisions, inserting subpar. (A) designation and adding subpar. (B).

Subsec. (d)(1)(A). Pub. L. 99-514, §1810(f)(3)(B), substituted “paragraph (2)” for “paragraph (2)(A)”.

Subsec. (d)(1)(B)(i). Pub. L. 99-514, §1810(f)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “any transferor's agent, the transferor is a foreign corporation or such agent has actual knowledge that such affidavit is false, or”.

Subsec. (e)(1). Pub. L. 99-514, §311(b)(4), substituted “34 percent” for “28 percent”.

Pub. L. 99-514, §1810(f)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “A domestic partnership, the trustee of a domestic trust, or the executor of a domestic estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of any amount of which such partnership, trustee, or executor has custody which is—

“(A) attributable to the disposition of a United States real property interest (as defined in section 897(c), other than a disposition described in paragraph (4) or (5)), and

“(B) either—

“(i) includible in the distributive share of a partner of the partnership who is a foreign person,

“(ii) includible in the income of a beneficiary of the trust or estate who is a foreign person, or

“(iii) includible in the income of a foreign person under the provisions of section 671.”

Subsec. (e)(2). Pub. L. 99-514, §311(b)(4), substituted “34 percent” for “28 percent”.

Subsec. (e)(3). Pub. L. 99-514, §1810(f)(5), inserted “The preceding sentence shall not apply if, as of the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B).”

Subsec. (e)(4). Pub. L. 99-514, §1810(f)(6), substituted “section 897” for “section 897(g)”.

Subsec. (e)(6). Pub. L. 99-514, §1810(f)(8), inserted “and regulations for the application of this subsection in the case of payments through 1 or more entities”.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108-27 applicable to amounts paid after May 28, 2003, see section 301(d)(2) of Pub. L. 108-27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108-27 inapplicable to taxable years beginning after Dec. 31, 2008, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108-27, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable only to amounts paid after Aug. 5, 1997, see section 311(d)(2) of Pub. L. 105-34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(c)(2) of Pub. L. 104-188 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 20, 1996].”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1003(b)(3) of Pub. L. 100-647 provided that the amendment made by that section is effective for taxable years beginning after Dec. 31, 1987.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 311(b)(4) of Pub. L. 99-514 applicable to payments made after Dec. 31, 1986, see section 311(c) of Pub. L. 99-514, as amended, set out as a note under section 1201 of this title.

Amendment by section 1810(f)(2), (3), (5), (6), (8) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Section 1810(f)(4)(B) of Pub. L. 99-514 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to dispositions after the day 30 days after the date of the enactment of this Act [Oct. 22, 1986].”

EFFECTIVE DATE

Section 129(c)(1) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [enacting this section] shall apply to any disposition on or after January 1, 1985.”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 1446. Withholding¹ tax on foreign partners' share of effectively connected income

(a) General rule

If—

- (1) a partnership has effectively connected taxable income for any taxable year, and
- (2) any portion of such income is allocable under section 704 to a foreign partner,

such partnership shall pay a withholding tax under this section at such time and in such manner as the Secretary shall by regulations prescribe.

(b) Amount of withholding tax

(1) In general

The amount of the withholding tax payable by any partnership under subsection (a) shall be equal to the applicable percentage of the effectively connected taxable income of the partnership which is allocable under section 704 to foreign partners.

(2) Applicable percentage

For purposes of paragraph (1), the term “applicable percentage” means—

- (A) the highest rate of tax specified in section 1 in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners who are not corporations, and
- (B) the highest rate of tax specified in section 11(b)(1) in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners which are corporations.

(c) Effectively connected taxable income

For purposes of this section, the term “effectively connected taxable income” means the taxable income of the partnership which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States computed with the following adjustments:

- (1) Paragraph (1) of section 703(a) shall not apply.
- (2) The partnership shall be allowed a deduction for depletion with respect to oil and gas wells but the amount of such deduction shall be determined without regard to sections 613 and 613A.
- (3) There shall not be taken into account any item of income, gain, loss, or deduction to the extent allocable under section 704 to any partner who is not a foreign partner.

(d) Treatment of foreign partners

(1) Allowance of credit

Each foreign partner of a partnership shall be allowed a credit under section 33 for such partner's share of the withholding tax paid by the partnership under this section. Such credit shall be allowed for the partner's taxable year in which (or with which) the partnership taxable year (for which such tax was paid) ends.

(2) Credit treated as distributed to partner

Except as provided in regulations, a foreign partner's share of any withholding tax paid by

the partnership under this section shall be treated as distributed to such partner by such partnership on the earlier of—

- (A) the day on which such tax was paid by the partnership, or
- (B) the last day of the partnership's taxable year for which such tax was paid.

(e) Foreign partner

For purposes of this section, the term “foreign partner” means any partner who is not a United States person.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including—

- (1) regulations providing for the application of this section in the case of publicly traded partnerships, and
- (2) regulations providing—
 - (A) that, for purposes of section 6655, the withholding tax imposed under this section shall be treated as a tax imposed by section 11 and any partnership required to pay such tax shall be treated as a corporation, and
 - (B) appropriate adjustments in applying section 6655 with respect to such withholding tax.

(Added Pub. L. 99-514, title XII, § 1246(a), Oct. 22, 1986, 100 Stat. 2582; amended Pub. L. 100-647, title I, § 1012(s)(1)(A), Nov. 10, 1988, 102 Stat. 3526; Pub. L. 101-239, title VII, § 7811(i)(6), Dec. 19, 1989, 103 Stat. 2410.)

AMENDMENTS

1989—Subsec. (b)(2)(B). Pub. L. 101-239, § 7811(i)(6)(A), substituted “section 11(b)(1)” for “section 11(b)”.

Subsec. (d)(2). Pub. L. 101-239, § 7811(i)(6)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “A foreign partner's share of any withholding tax paid by the partnership under this section shall be treated as distributed to such partner by such partnership on the last day of the partnership's taxable year (for which such tax was paid).”

Subsec. (f). Pub. L. 101-239, § 7811(i)(6)(C), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations providing for the application of this section in the case of publicly traded partnerships.”

1988—Pub. L. 100-647 amended section generally, substituting provisions relating to withholding tax on foreign partners' share of effectively connected income for provisions which related to withholding tax on amounts paid by partnerships to foreign partners.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(s)(1)(D) of Pub. L. 100-647 provided that: “The amendments made by this paragraph [amending sections 1446 and 6401 of this title] shall apply to taxable years beginning after December 31, 1987. No amount shall be required to be deducted and withheld under section 1446 of the 1986 Code (as in effect before the amendment made by subparagraph (A)).”

EFFECTIVE DATE

Section 1246(d) of Pub. L. 99-514 provided that: “The amendment made by this section [enacting this section

¹ So in original. Probably should be followed by “of”.

and amending section 6401 of this title] shall apply to distributions after December 31, 1987 (or, if earlier, the effective date (which shall not be earlier than January 1, 1987) of the initial regulations issued under section 1446 of the Internal Revenue Code of 1986 as added by this section).”

Subchapter B—Application of Withholding Provisions

Sec.	
1461.	Liability for withheld tax.
1462.	Withheld tax as credit to recipient of income.
1463.	Tax paid by recipient of income.
1464.	Refunds and credits with respect to withheld tax.
[1465.	Repealed.]

PRIOR PROVISIONS

A prior subchapter B, consisting of section 1451, acts Aug. 16, 1954, ch. 736, 68A Stat. 359; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, related to tax-free covenant bonds, prior to repeal by Pub. L. 98-369, div. A, title IV, §474(r)(29)(A), July 18, 1984, 98 Stat. 844, which repeal was not applicable with respect to obligations issued before Jan. 1, 1984, pursuant to section 475(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 33 of this title.

AMENDMENTS

1986—Pub. L. 99-514, title XVIII, §1899A(73), Oct. 22, 1986, 100 Stat. 2963, substituted “Liability for withheld tax” for “Return and payment of withheld tax” in item 1461.

1984—Pub. L. 98-369, div. A, title IV, §474(r)(29)(A), July 18, 1984, 98 Stat. 844, redesignated subchapter C as B, and struck out former subchapter B which related to tax-free covenant bonds.

1976—Pub. L. 94-455, title XIX, §1901(b)(41), Oct. 4, 1976, 90 Stat. 1803, struck out item 1465 “Definition of withholding agent”.

[§ 1451. Repealed. Pub. L. 98-369, div. A, title IV, § 474(r)(29)(A), July 18, 1984, 98 Stat. 844]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 359; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, related to tax-free covenant bonds. The repeal was not applicable with respect to obligations issued before Jan. 1, 1984, pursuant to section 475(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 33 of this title.

§ 1461. Liability for withheld tax

Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 360; Pub. L. 89-809, title I, §103(i), Nov. 13, 1966, 80 Stat. 1554.)

AMENDMENTS

1966—Pub. L. 89-809 struck out requirement that persons required to deduct and withhold any tax under this chapter make return thereof on or before March 15 of each year and pay the tax to the officer designated in section 6151, and substituted “Liability for withheld tax” for “Return and payment of withheld tax” in section catchline.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to payments occurring after Dec. 31, 1966, see section 103(n)(3) of Pub. L. 89-809, set out as a note under section 871 of this title.

§ 1462. Withheld tax as credit to recipient of income

Income on which any tax is required to be withheld at the source under this chapter shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

(Aug. 16, 1954, ch. 736, 68A Stat. 360.)

§ 1463. Tax paid by recipient of income

If—

(1) any person, in violation of the provisions of this chapter, fails to deduct and withhold any tax under this chapter, and

(2) thereafter the tax against which such tax may be credited is paid,

the tax so required to be deducted and withheld shall not be collected from such person; but this section shall in no case relieve such person from liability for interest or any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(Aug. 16, 1954, ch. 736, 68A Stat. 360; Pub. L. 101-239, title VII, §7743(a), Dec. 19, 1989, 103 Stat. 2406; Pub. L. 104-188, title I, §1704(t)(9), Aug. 20, 1996, 110 Stat. 1887.)

AMENDMENTS

1996—Pub. L. 104-188 substituted “this section” for “this subsection”.

1989—Pub. L. 101-239 amended section generally. Prior to amendment, section read as follows: “If any tax required under this chapter to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed on or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.”

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7743(b) of Pub. L. 101-239 provided that: “The amendment made by subsection (a) [amending this section] shall apply to failures after December 31, 1989.”

§ 1464. Refunds and credits with respect to withheld tax

Where there has been an overpayment of tax under this chapter, any refund or credit made under chapter 65 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

(Aug. 16, 1954, ch. 736, 68A Stat. 360.)

[§ 1465. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(156), Oct. 4, 1976, 90 Stat. 1789]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 360, defined withholding agent.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

[CHAPTER 4—REPEALED]**[§ 1471. Repealed. Pub. L. 94-455, title XIX, § 1901(b)(13)(A), Oct. 4, 1976, 90 Stat. 1840]**

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 361, related to recovery of excessive profits on government contracts.

SAVINGS PROVISION

Section 1951(b)(13)(B) of Pub. L. 94-455 provided that: “If the amount of profit required to be paid into the Treasury under section 2382 or 7300 of title 10, United States Code is not voluntarily paid, the Secretary of the Treasury or his delegate shall collect the same under the methods employed to collect taxes under subtitle A [this subtitle]. All provisions of law (including penalties) applicable with respect to such taxes and not inconsistent with section 2382 or 7300 of title 10 of such Code, shall apply with respect to the assessment, collection, or payment of excess profits to the Treasury as provided in the preceding sentence, and to refunds by the Treasury of overpayments of excess profits into the Treasury.”

[§§ 1481, 1482. Repealed. Pub. L. 101-508, title XI, § 11801(a)(37), Nov. 5, 1990, 104 Stat. 1388-521]

Section 1481, acts Aug. 16, 1954, ch. 736, 68A Stat. 362; June 21, 1965, Pub. L. 89-44, title VIII, § 809(d)(5)(B), 79 Stat. 168; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1901(a)(157), 1906(b)(13)(A), 1951(b)(14)(A), 90 Stat. 1789, 1834, 1840, related to mitigation of effect of renegotiation of government contracts.

Section 1482, added Pub. L. 85-866, title I, § 62(a), Sept. 2, 1958, 72 Stat. 1648, related to readjustment for repayments made pursuant to price redeterminations.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

[CHAPTER 5—REPEALED]**[§§ 1491, 1492. Repealed. Pub. L. 105-34, title XI, § 1131(a), Aug. 5, 1997, 111 Stat. 978]**

Section 1491, acts Aug. 16, 1954, ch. 736, 68A Stat. 365; Oct. 4, 1976, Pub. L. 94-455, title X, § 1015(a), 90 Stat. 1617; Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(u)(14)(A), 92 Stat. 2919; Aug. 20, 1996, Pub. L. 104-188, title I, § 1907(b)(1), 110 Stat. 1916, imposed tax on transfers to avoid income tax.

Section 1492, acts Aug. 16, 1954, ch. 736, 68A Stat. 365; Jan. 12, 1971, Pub. L. 91-681, § 1(b), 84 Stat. 2066; Oct. 4, 1976, Pub. L. 94-455, title X, § 1015(b), title XIX, § 1906(b)(13)(A), 90 Stat. 1618, 1834; Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(u)(14)(B), 92 Stat. 2919; July 18, 1984, Pub. L. 98-369, div. A, title I, § 131(f)(1), 98 Stat. 665, related to nontaxable transfers.

[§ 1493. Repealed. Pub. L. 89-809, title I, § 103(l)(2), Nov. 13, 1966, 80 Stat. 1554]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 365, defined foreign trust.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89-809, set out as an Effective Date of 1966 Amendment note under section 871 of this title.

[§ 1494. Repealed. Pub. L. 105-34, title XI, § 1131(a), Aug. 5, 1997, 111 Stat. 978]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 365; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834; July 18, 1984, Pub. L. 98-369, div. A, title I, § 131(f)(2), 98 Stat. 665; Aug. 20, 1996, Pub. L. 104-188, title I, § 1902(a), 110 Stat. 1909, provided for payment and collection of the tax imposed under section 1491 of this title.

CHAPTER 6—CONSOLIDATED RETURNS

Subchapter	Sec. ¹
A. Returns and Payment of Tax	1501
B. Related Rules	1551

Subchapter A—Returns and Payment of Tax

Sec.	
1501.	Privilege to file consolidated returns.
1502.	Regulations.
1503.	Computation and payment of tax.
1504.	Definitions.
1505.	Cross references.

§ 1501. Privilege to file consolidated returns

An affiliated group of corporations shall, subject to the provisions of this chapter, have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(Aug. 16, 1954, ch. 736, 68A Stat. 367.)

§ 1502. Regulations

The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

(Aug. 16, 1954, ch. 736, 68A Stat. 367; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108-357, title VIII, § 844(a), Oct. 22, 2004, 118 Stat. 1600.)

AMENDMENTS

2004—Pub. L. 108-357 inserted at end “In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter

¹ Section numbers editorially supplied.